THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 19908 of 2002

O r d e r:

The petitioner, who is working as Stores Assistant in the respondents-AP TRANSCO, was issued with charge sheet dated 14.06.2001, alleging misappropriation of aluminium scrap weighing 20,636 Kgs. The petitioner submitted his explanation. Dis-satisfied with the explanation, the respondents conducted enquiry, and the enquiry officer submitted enquiry report on 30.11.2001 stating that the charges leveled against the petitioner are not proved. Even though the petitioner was not found guilty, yet the respondents on 08.05.2002, filed a criminal case against the petitioner, which was registered as Crime No.65 of 2002 on the file of Station House Officer, IV Town Police Station, Kurnool. However, on 28.06.2002, the 3rd respondent, namely the Chairman and Managing Director, again passed orders placing the petitioner under suspension on the ground that he misappropriated 20,636 Kgs. of aluminium scrap, pending enquiry. Thereafter, vide orders dated 24.07.2002, appointed an Enquiry Officer, and charge sheet dated 16.09.2002 was issued. Assailing the orders of suspension, pending enquiry, passed by the 3rd respondent dated 28.06.2002, and the consequential proceedings, namely the charge sheet dated 16.09.2002, issued for conducting re-enquiry, and the criminal complaint lodged against him, the petitioner filed the present writ petition.

The learned counsel for the petitioner submitted that inasmuch as earlier the Enquiry Officer submitted report holding that the charges leveled against the petitioner are not proved, the 3rd respondent could

not have placed the petitioner under suspension and ordered for second enquiry into the very same charges, in relation to which already the enquiry officer held the charges not proved against the petitioner. He thus prayed that the impugned order dated 28.06.2002, passed by the 2nd respondent placing the petitioner under suspension, pending enquiry, and the consequential proceedings, namely the charge sheet dated 16.09.2002, issued for conducting the second enquiry, as also the criminal complaint lodged against the petitioner, be declared is illegal and arbitrary, and more so when there is no provision either under law or under the AP TRANSCO/DISCOMS Employee's Revised Conduct Regulations, which enable the respondents to conduct the second enquiry into the charges, in respect of which, already enquiry was conducted and report submitted. In support of his arguments, he placed reliance on the judgments of the Gujarat High Court in **Dr. D.D. Vaidya v. Board of Management**[1], of this Court in **Ch. S.R.A. Swamy v. A.P.S.E.B.**[2], **B. Balakrishna Reddy v. A.P.S.E.B.**[3] and **Commissioner of Police v. N. Gopal**[4], and of the apex Court in **Gulab Ajwani v. Saraswati Bai**[5], **Financial Commr. (Taxation) Punjab v. Harbhajan Singh**[6], **Balbir Chand v. Food Corporation of India Ltd.**[7] and **Amar Nath Chowdhury v. Braithwaite and Company Ltd. & Ors.**[8]

The 1st respondent filed counter affidavit on behalf of the respondents. The learned Standing Counsel for the respondents reiterating the counter averments submitted that though in the first enquiry, the Enquiry Officer reported that the charges leveled against the petitioner are not proved, he however, observed that the petitioner

was not competent to sign on Form No. 13 or other related documents, and such actions of the petitioner being irregular, amount to misconduct. He submitted that under the provisions of Regulation 7(b) to (e) of AP TRANSCO/DISCOMS Employee's Discipline and Appeal Regulations, the higher/superior authority is not debarred from exercising power to order re-enquiry if the lower authority has dropped a charge against a person as not proved. He submitted that 3rd respondent, through vigilance report, came to know that the petitioner was involved in not accounting the aluminium scrap. Therefore, the 3rd respondent, apart from directing lodging of police complaint against the petitioner, placed the petitioner under suspension, and in exercise of the power vested in him under Regulation 7(b) to (e) of AP TRANSCO/DISCOMS Employee's Discipline and Appeal Regulations, ordered for a second enquiry, and also appointed an Enquiry Officer, who issued charge sheet. He, thus prayed that no interference is called for with the impugned order, passed by the 3rd respondent, and the consequential enquiry proceedings.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-AP TRANSCO.

There is no doubt that in the first enquiry, the Enquiry Officer exonerated the petitioner of the charges leveled against him, but it is the case of the respondents that the Enquiry Officer, even though exonerated the petitioner, yet observed that the petitioner despite his incompetency had signed in Form No. 13 and other related documents, which actions are irregular and amount to misconduct. Be that as it may, it is the further case of the respondents that it came to the knowledge of the 3rd respondent through vigilance report that the petitioner was involved in not accounting for the aluminium scrap, and having regard to the adverse report felt that the continuance of the

petitioner would not be in the interest of the respondents, and accordingly by reason of the impugned order placed him under suspension, and ordered for a second enquiry, and also appointed an Enquiry Officer, who issued charge sheet for enquiring into the matter.

Though the petitioner contends that there is no provision under law or the AP TRANSCO/DISCOMS Employee's Revised Conduct Regulations, to order for a second enquiry, in respect of the charges, which were enquired into earlier and held not proved, the fact remains, under Regulation 7(b) to (e) of the AP TRANSCO/DISCOMS Employee's Revised Regulations, in the event of the lower authority dropping the charges against a person as not proved, the superior authority is not debarred from exercising the power and pass orders superseding the orders passed by the lower authority. In the instant case, the first enquiry was conducted by the 2nd respondent, namely the Divisional Engineer, and the 1st respondent, namely the Superintending Engineer, being the disciplinary authority, based on the enquiry report submitted by the 2nd respondent, exonerated the petitioner, but inasmuch as the Superintending Engineer, is an authority lower to the 3rd respondent, namely the Chairman & Managing Director, certainly under Regulation 7(b) to (e) of the AP TRANSCO/DISCOMS Employee's Revised Conduct Regulations, the 3rd respondent has the power to supersede the orders of the 1st respondent and order for re-enquiry, and in exercise of such power, the 3rd respondent has ordered re-enquiry into the charges, which earlier were held not proved against the petitioner in the enquiry. The judgments relied upon by the petitioner, would not come to his rescue, for they were rendered in situations, where there was no provision which enabled the authorities to order second enquiry or review or

revise their own order, but in the instant case, the superior authority is vested with the power or undoing the orders passed by the lower authority. In that view of the matter, the petitioner cannot be allowed to contend that there is no provision, which enables the respondents from ordering a second enquiry into the charges, which were already held to be not proved in the first enquiry.

The writ petition is devoid of merit, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 21st November, 2006.
KSR

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[1] 1988 (2) SLR 75
[2] 1996 (1) An.W.R. 207
[3] 1998 (2) ALT 365
[4] 2002 (5) ALT 308 (DB)
[5] (1977) 3 SCC 581
[6] (1996) 9 SCC 281
[7] AIR 1997 SC 2229
[8] JT 2002 (1) SC 156